

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant,

v

Supreme Court No. 150146
Court of Appeals No. 314705
Wayne County Circuit Court
No. 12-010198-02-FH

PAUL CHARLES SEEWALD,

Defendant/Appellee.

APPELLEE PAUL SEEWALD'S
BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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COUNTER STATEMENT OF JURISDICTION

This Court granted leave to appeal on November 26, 2014. This Court has jurisdiction pursuant to MCL 770.3(6); MCR 7.301(A)(2).

COUNTER STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE APPELLANT'S BRIEF CONTINUES TO MISCHARACTERIZE THE CHARGE THAT WAS FILED AGAINST THE APPELLEE.

Plaintiff-Appellant Answers: NO

Defendant-Appellee Answers: YES

II. WHETHER APPELLANT IS ATTEMPTING TO MISCONSTRUE AND MISAPPLY THE TERM "LEGAL" AS USED IN MCL 750.157a(d)

Plaintiff-Appellant Answers: NO

Defendant-Appellee Answers: YES

The Lower Court Answered: YES

III. WHETHER APPELLANT IS ATTEMPTING TO MISCONSTRUE AND MISAPPLY THE TERMS "COMMIT" AND "ACT" AS USED IN MCL 750.157a(d)

Plaintiff-Appellant Answers: NO

Defendant-Appellee Answers: YES

The Lower Court Answered: YES

INTRODUCTION

The Appellant's claims in this case would have the effect of greatly amending the provisions of MCL 750.157a, to effectively make all conspiracies a felony. As further addressed in Issue III, below, under the Appellant's flawed reasoning, any prosecutor could charge a felony conspiracy in any situation. All that he or she would have to do is broaden the scope and the time frame of the alleged conspiracy wide enough, and point to something down the road that was legal. For example, most of the people who conspire to steal something intend to use the proceeds of this crime to lawfully purchase things. Under the Appellant's reasoning, if two people jointly stole one dollar, and spent it on candy, they could be charged with felony conspiracy, because the candy purchase was legal. These lawful purchases do not make every joint crime a felony conspiracy to "commit a legal act in an illegal manner". The Appellant's reasoning has the effect of eliminating the statutory distinction in MCL 750.157a between misdemeanor conspiracies "to commit an offense prohibited by law" and felony conspiracies "to commit a legal act in an illegal manner", and would effectively eliminate and delete the misdemeanor of conspiracy to commit an offense prohibited by law from the statute. Despite the Appellant's claims to the contrary, the Appellant does not have the prosecutorial discretion to amend the statute in this manner.

In this Court, and in the Courts below, the Appellant has also attempted to gloss over two other fatal defects in their legal analysis. The first of these fatal flaws in the Appellant's analysis, as addressed in Issue I, below, is the fact that the charging document in this case expressly alleged that the Appellee "conspired . . . to submit nominating petitions with valid signatures to the Michigan Secretary of State." The Circuit Court and the Court of Appeals have held that, by definition and pursuant to state law, the Appellant could not have submitted petitions with "valid signatures", because such petitions and signatures are invalid and illegal pursuant to state law. MCL 168.544(c).

The other fatal flaw in the Appellant's analysis, which is addressed in Issue III, below, is the Appellant's attempt to overlook the conspiracy statute's required element in MCL 750.157a that the Appellee must have conspired: "to (himself) commit a legal act". Although the Appellant initially contended that the Appellee conspired "to commit the legal act" of "submitting petitions with valid signatures", when this theory and claim went awry, the Appellant contended, contrary to the charged offense, that the Appellee instead conspired "to commit the legal act" of "getting the Congressman's name placed on the ballot". Appellant's Brief, Page 12. The fatal flaw with this theory is that the act of placing the Congressman's name on the ballot is an act that cannot be performed by the Appellee. This act is performed by state officials, and the Appellee himself had no possible authority or ability to "to commit the legal act" of placing the Congressman's name on the ballot. The statute does not proscribe "committing an act which causes some other third party to commit a legal act", as now claimed by the Appellant.

COUNTER STATEMENT OF FACTS

A unique procedure was followed in this case. When Congressman Thaddeus McCotter's nominating petitions were disapproved by the Secretary of State's office, a number of witnesses, including Congressman McCotter, Defendant Don Yowchuang, and Appellee Paul Seewald, agreed to be interviewed by an attorney from the Attorney General's office. During these "interviews", the Assistant Attorney General asked many leading questions of the witnesses, in an apparent search for a felony charge.

As addressed in Appellant's Statement of Facts, the witnesses stated that it was Defendant Don Yowchuang's duty to collect signatures for the nominating petitions, and to file them with the Secretary of State's office. In his June 4, 2012 interview, Appellee Seewald stated that he did not inspect any petitions that came into the office. The Monday before the petitions were due to be filed, Defendant Yowchuang presented him with a number of petitions and asked him to sign as the circulator of the petitions. Appellee Seewald asked Mr. Yowchuang where the petitions had come from, and he was told that some of the circulators had turned in the petitions without signing that they were the circulators. Appellee Seewald signed the petitions. The petitions were filed with the Secretary of State's office by Mr. Yowchuang. 6/4/12 Interview of Appellee Seewald, pages 12 and 13, Appellant's Appendix item 118a.

Appellee Seewald was thereafter charged with nine misdemeanor counts for improperly signing as the circulator on the petitions. He pleaded guilty to these misdemeanor charges. Appellee was also charged with committing a felony conspiracy under MCL 750.157a(d). This felony charge stated that Yowchuang and Appellee Seewald did "unlawfully conspire, combine, confederate and agree together with one another to submit nominating petitions with valid

signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator contrary to MCL 750.157a." (Appellant's Appendix item 70a).

Appellee Seewald filed a timely Motion to Quash the Preliminary Exam bind over on this felony conspiracy charge, which asserted that the felony conspiracy statute, MCL 750.157a(d), is not legally applicable in this matter. At the January 18, 2013, hearing on this Motion, Circuit Court Judge Margie Braxton quashed the felony conspiracy charge against Appellee Seewald, and told Assistant Attorney General Gregory Townsend:

I would have to disagree with you Mr. Townsend. I think the points made by Mr. Mandell are well taken. I disagree with your position as it relates to the fact that this was a conspiracy and the fact that these were valid signatures. (1/18/13 Motion and Sentencing Hearing, Appellant's Appendix item 109a).

The Attorney General then filed an appeal to the Michigan Court of Appeals. Affirming the Circuit Court's dismissal of the felony conspiracy count against Appellee Seewald, the majority opinion of the Court of Appeals held, in pertinent part, that:

"Again, the prosecution asserts that defendants committed a "legal act in an illegal manner" under MCL 750.157a(d) when they: (1) signed nominating petitions as circulators, despite the fact that they did not circulate the petitions; and (2) submitted these petitions to the Secretary of State, with the intent of placing Thaddeus McCotter's name on the ballot. This claim is without merit because at no time during their conspiracy did defendants engage in a "legal act." Defendants decided to violate MCL 168.544c(7)(c) and 168.544c(8) when they signed nominating petitions as circulators, despite the fact that they did not circulate the petitions. This conduct is "illegal" because it is "forbidden by law"—namely, MCL 168.544c(7)(c) and 168.544c(8). Defendants then attempted to pass off these nominating petitions as valid and genuine by submitting them to the Secretary of State—and thus committed fraud. The purpose of the conspiracy, then, was to defraud the Secretary of State, something which is also "illegal" because it is "forbidden by law." It is thus impossible for defendants to have conspired to commit a "legal act in an illegal manner" under MCL 750.157a(d) because defendants did the exact opposite—they conspired to commit an *illegal* act in an *illegal* manner.

The prosecution attempts to circumvent this rather obvious fact through citation of defendants' admission that their ultimate goal was to place McCotter's name on the primary ballot, which the prosecution says, in and of itself, is a "legal act." This expands the scope of the conspiracy beyond all reason. It also ignores the fact that had McCotter actually been

placed on the ballot, it would not have been a "legal act" at all, because it would have been made possible by defendant's defrauding of the Secretary of State

The immediate goal of defendants' misconduct was to defraud the Secretary of State through falsely signed nominating petitions. They therefore did not violate MCL 750.157a(d), which requires that defendants conspire to effect a "legal act in an illegal manner."

IV. CONCLUSION

Accordingly, the district court misinterpreted MCL 750.157a(d) and allowed the conspiracy charge against defendants to proceed to circuit court. The circuit court thus properly quashed the bindover.

Affirmed." (decision of the Michigan Court of Appeals, Appellant's Appendix item 7a).

For the reasons stated herein, the Appellee respectfully asserts that there is no factual or legal merit to the claims that are made in the Appellant's Brief on Appeal. Accordingly, this appeal should be dismissed, and the decisions of the Circuit Court and the Court of Appeals should be affirmed.

ISSUE I

THE APPELLANT'S BRIEF CONTINUES TO MISCHARACTERIZE THE CHARGE THAT WAS FILED AGAINST THE APPELLEE.

COUNTER STATEMENT OF STANDARD OF REVIEW: In *People v Miller*, 288 Mich App 207; 795 NW2d 156 (2010), the court held: "This Court reviews a trial court's decision on a motion to quash the information for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). To the extent that a lower court's decision on a motion to quash the information is based on an interpretation of the law, appellate review of the interpretation is de novo. *Id.*" Also, in *Vodvarka v. Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003), the court held that: "Questions of law are reviewed for clear legal error."

ARGUMENT

The criminal charge in this matter stated that Appellee Seewald and co-defendant Don Yowchuang did "unlawfully conspire, combine, confederate and agree together with one another to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator; contrary to MCL 750.157a." (Appellant's Appendix item 70a). At the Circuit Court hearing on Appellee's Motion to Quash, Appellee's counsel successfully asserted that this charge is defective due to the fact that the nominating petitions that were submitted to the Secretary of State did not contain legally valid signatures. At the same Circuit Court hearing, Judge Braxton stated to Assistant Attorney General Gregory Townsend:

I would have to disagree with you Mr. Townsend. I think the points made by Mr. Mandell are well taken. I disagree with your position as it relates to the fact that this was a conspiracy and the fact that these were valid signatures. (1/18/13 Motion and Sentencing Hearing, Appellant's Appendix item 109a).

On Appeal, the Appellant has now recognized that Appellee Seewald could not have conspired to commit the legal act of "submitting valid signatures" as alleged in the written charge, because, as a matter of law, the signatures submitted were unlawful and invalid as a result of the improper circulator signature. Consequently, on appeal the Appellant has inexplicably attempted

to change and mischaracterize the criminal charge in this case (directly contrary to the express language of the charging document) to provide that the Appellee conspired in "filing nominating petitions to get Congressman McCotter on the ballot." In fact, the Appellant repeats this claim throughout the Appellant's brief as if, by sheer repetition, it could somehow become true and the language of the charging document in this matter could somehow be changed on appeal.

Appellant's new claims concerning the alleged "legal act" that was allegedly committed in an alleged conspiracy are simply unprecedented and irrelevant herein. As the court succinctly held in *People v. Quinn*, 136 Mich App 145, 147; 356 NW 2d 10 (1984):

"A trial court has no authority to convict a defendant of an offense not specifically charged unless the defendant has had adequate notice. *People v Adams*, 389 Mich 222; 205 NW2d 415; 59 ALR3d 1288 (1973); *DeJonge v Oregon*, 299 U.S. 353; 57 S Ct 255; 81 L Ed 278 (1937)."

For these reasons, there is simply no merit to the claims made in the Appellant's Brief. Accordingly, this appeal should be dismissed, and the decisions of the Circuit Court and the Court of Appeals should be affirmed.

ISSUE II**APPELLANT IS ATTEMPTING TO MISCONSTRUE AND MISAPPLY THE TERM
"LEGAL" AS USED IN MCL 750.157a(d).**

COUNTER STATEMENT OF STANDARD OF REVIEW: In *People v Miller*, 288 Mich App 207; 795 NW2d 156 (2010), the court held: "This Court reviews a trial court's decision on a motion to quash the information for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). To the extent that a lower court's decision on a motion to quash the information is based on an interpretation of the law, appellate review of the interpretation is de novo. *Id.*" Also, in *Vodvarka v. Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003), the court held that: "Questions of law are reviewed for clear legal error."

ARGUMENT

MCL 750.157a provides as follows:

"§ 750.157a. Conspiracy to commit offense or legal act in illegal manner; penalty.

Sec. 157a. Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein:

(a) Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of \$ 10,000.00 may be imposed.

(b) Any person convicted of conspiring to violate any provision of this act relative to illegal gambling or wagering or any other acts or ordinances relative to illegal gambling or wagering shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$ 10,000.00, or both such fine and imprisonment.

(c) If commission of the offense prohibited by law is punishable by imprisonment for less than 1 year, except as provided in paragraph (b), the person convicted under this section shall be imprisoned for not more than 1 year nor fined more than \$ 1,000.00, or both such fine and imprisonment.

(d) Any person convicted of conspiring to commit a legal act in an illegal manner shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$ 10,000.00, or both such fine and imprisonment in the discretion of the court." (Emphasis Supplied).

The elements of a criminal conspiracy to commit a legal act in an illegal manner include:

- (1) A mutual agreement or understanding;
- (2) Between two or more persons;
- (3) To commit a legal act;
- (4) By unlawful means.

People v Carter, 415 Mich 558, 567; 330 NW2d 314 (1982) (emphasis added).

A. THERE WAS NO CONSPIRACY TO COMMIT A "LEGAL" ACT.

In order to be charged under this type of conspiracy, there must be an agreement to commit a *legal* act. The specific language used to charge Paul Seewald states that he, along with Mr. Yowchuang, did “unlawfully conspire, combine, confederate and agree together with one another to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator.” (Appellant's Appendix item 70a). The Attorney General argued below that the submission of “valid signatures” was the legal act that was committed for purposes of the conspiracy. As determined by the Circuit Court, however, this claim is incorrect as a matter of law.

Signatures on a nominating petition sheet are only legal and valid if the person who physically circulates the sheet signs it as the circulator. This signature certifies that he is qualified to circulate the petition, each signature was signed in his presence, and that he believes each signature is genuine. MCL 168.544c. Furthermore, MCL 168.544c(8) provides that: “A filing official shall not count electors' signatures . . . that are contained in a petition that the circulator did not sign and date.” Consequently, signatures on a petition that are not properly witnessed and signed by the circulator, are invalid and unlawful, and are not counted by the Secretary of State.

Appellee Seewald could not have conspired to commit the legal act of “submitting valid signatures” as alleged in the charge in this case, because, as a matter of law, the signatures submitted were invalid and unlawful as a result of the improper circulator signature. Michigan election law makes it clear that the presence of petition signatures of registered voters do not make

the petitions valid – proper authorization by the circulator is required for the signatures to be lawful and valid. Because these signatures were invalid at the time they were signed and submitted, and the submission of invalid signatures is an illegal act under the law, Appellee Seewald could not have conspired to commit a legal act in an illegal manner. Rather, Mr. Seewald may have signed the nominating sheets as circulator when he was not in fact the circulator, and these invalid signatures may have been submitted to the Secretary of State, but at no time did Appellee Seewald conspire to commit a legal act in an illegal manner. Pursuant to Michigan's election law, submitting invalid signatures is an illegal act. Under MCL 750.157a(c), conspiring to commit an offense prohibited by law, such as submitting invalid signatures, is a misdemeanor punishable by a maximum of not more than one year imprisonment and a fine of not more than \$1,000.00.

Unfortunately, there is little case law in Michigan concerning MCL 750.157a(d) – the conspiracy to commit a legal act in an illegal manner. *People v Duncan*, 55 Mich App 403; 222 NW2d 261 (1974) provides some guidance on this offense. In *Duncan*, Defendant police officers were convicted of conspiracy to commit a legal act in an illegal manner. The facts at trial showed that the defendants offered to return specific property held in the Police Department property room to the complainant. However, before they would return this property to the complainant, they solicited a bribe from her in the amount of \$800.00.

The court affirmed the conspiracy convictions of the two police officers. In *Duncan*, the legal act that the officers agreed to and performed was to return the property to the complainant – property which she was entitled to possess. However, this *legal* act was done in an *illegal* manner – it was illegal for the officers to solicit the \$800 bribe from the complainant in exchange for the return of her property.

In contrast to the defendants in *Duncan*, Appellee Seewald did not conspire to commit a *legal* act in an illegal manner. As noted, the specific language used to charge Appellee Seewald states that he, along with Mr. Yowchuang, did “unlawfully conspire, combine, confederate and agree together with one another to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator.” However, the signatures contained on these petition sheets were not legal or valid because they were not properly witnessed or signed by the circulator, as required by MCL 168.544c. Instead, the signatures were invalid as a matter of law pursuant to MCL 168.961(2).

In fact, in the June 29, 2012, interview of Appellee Seewald, the Assistant Attorney General asked Mr. Seewald: “You knew at the time that it was not a legal act to sign for somebody else, other petitions?” (Interview of Paul Seewald, p. 61, lines 15-16). The Assistant Attorney General also asked if Seewald was suspicious that it was Don who “fraudulently presented the petitions.” (Interview of Paul Seewald, p. 60, lines 21-23). By the Assistant Attorney General own words, both the act of signing the petitions as well as presenting them were illegal and fraudulent acts. These acts, referred to by the Assistant Attorney General as illegal and fraudulent, are the very acts that the Attorney General’s office has now tried to characterize as “legal acts” in order to charge Mr. Seewald under the felony conspiracy statute (MCL 750.157a(d)) rather than the misdemeanor conspiracy statute (MCL 750.157a(c)).

In this case, Mr. Seewald did not conspire to commit a *legal* act in an illegal manner. As a matter of law, the petition signatures were not legal or valid because they were not properly witnessed or signed by the circulator. Consequently, any agreement to submit these invalid signatures could not have been a “legal act” for purposes of the conspiracy charge. Accordingly, there is no factual or legal merit to any of Appellant’s claims on appeal, and the Appellant’s claims were appropriately dismissed by the Circuit Court and the Michigan Court of Appeals.

**B. ACCORDING TO THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE
STATUTE, APPELLEE COULD NOT HAVE CONSPIRED TO COMMIT A LEGAL ACT
IN AN ILLEGAL MANNER.**

When interpreting a statute, courts must ascertain the legislative intent that may be reasonably inferred from the statutory language itself. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895 (2005) (internal citations omitted). When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted. *Id.* Further, courts accord undefined statutory terms their plain and ordinary meanings and may consult dictionary definitions in such situations. *Id.*

MCL 750.157a(d) does not define the terms "legal act" or "illegal manner," so the court must use the ordinary and plain meanings of those terms when interpreting the statute. Black's Law Dictionary defines a legal act as "1. Any act not condemned as illegal, 2. An action or undertaking that creates a legally recognized obligation; an act that binds a person in some way." *Black's Law Dictionary* 418 (3rd pocket ed. 2006). Black's does not define the term "illegal manner," but does define "illegality" as "1. An act that is not authorized by the law, 2. The state of not being authorized, 3. The state or condition of being unlawful." *Black's Law Dictionary* 337 (3rd pocket ed. 2006). "Manner" is defined as "a way of doing, being done, or happening; mode of action, occurrence, etc." *Manner Definition*, Dictionary.com, <http://dictionary.reference.com/browse/manner> (Last visited Nov. 19, 2012). In other words, the plain meaning of the term "illegal manner" is performing an action in a way that is unlawful or has not been authorized by the law.

Because we are confined to the statutory language, in order for the felony conspiracy charge to stand, the defendant must have conspired to commit a legal act in an illegal manner. The prosecution's charge alleged that Paul Seewald conspired to commit the lawful act of "submitting

nominating petitions with valid signatures to the Michigan Secretary of State.” The Appellee does not know whether the signatures on the petition may have been those of registered voters. Whether they were registered voters would not, however, make them “valid” signatures as incorrectly claimed by the prosecution.

For all of these reasons, it is clear that the Appellant is attempting to misconstrue and misapply the term "legal" as used in MCL 750.157a(d), and that there is absolutely no factual or legal merit to the claims made by the Appellant. Accordingly, the decisions of the Court of Appeals and the Circuit Court should be affirmed, and this Appeal should be dismissed.

ISSUE III

APPELLANT IS ATTEMPTING TO MISCONSTRUE AND MISAPPLY THE TERMS "COMMIT" AND "ACT" AS USED IN MCL 750.157a(d).

COUNTER STATEMENT OF STANDARD OF REVIEW: In *People v Miller*, 288 Mich App 207; 795 NW2d 156 (2010), the court held: "This Court reviews a trial court's decision on a motion to quash the information for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). To the extent that a lower court's decision on a motion to quash the information is based on an interpretation of the law, appellate review of the interpretation is de novo. *Id.*" Also, in *Vodvarka v. Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003), the court held that: "Questions of law are reviewed for clear legal error."

ARGUMENT

At the trial court level both parties briefed and argued the issue of whether the alleged facts can, as a matter of law, support a charge of conspiracy to commit a legal act in an illegal manner. Judge Margie Braxton agreed that the submission of these signatures was *not* a legal act because the signatures were invalid under Michigan Election Law. The Attorney General's office now appears to have realized that submission of these invalid signatures cannot be a legal act to form the basis of a felony conspiracy charge under MCL 750.157a(d). In an effort to make these alleged facts fit the felony conspiracy charge, the Appellant is now attempting to characterize the "act" or goal of the conspiracy as "fil[ing] a nominating petition in order to procure Congressman McCotter's placement on the ballot."

Appellant has attempted to broaden the "goal" of the alleged conspiracy as wide as possible in order to find some legal "act" to support the felony conspiracy charge.

As addressed above, the submission of these signatures, as a matter of law, cannot be the goal of a conspiracy to commit a legal act in an illegal manner. Michigan Election Law prohibits the submission of petitions invalidly signed by the circulator. MCL 168.544c(7)(c).

Further, under Appellant's "broaden the scope of the alleged conspiracy as far as necessary to find a legal act" reasoning, any agreement to commit any crime, no matter how insignificant, could be charged as a five year felony. Under Appellant's flawed reasoning, any prosecutor could charge a felony conspiracy in any situation. All he or she would have to do is broaden the scope and the time frame of the alleged conspiracy wide enough to find something that was legal. Every group of criminals intends to use the proceeds of their crime to lawfully purchase things. This lawful purchase does not make every joint crime a felony conspiracy to perform a legal act in an illegal manner.

The Appellant's reasoning in this matter has the effect of eliminating the statutory distinction in MCL 750.157a between misdemeanor conspiracies "to commit an offense prohibited by law" and felony conspiracies "to commit a legal act in any illegal manner", and would effectively eliminate and delete the misdemeanor of conspiracy to commit an offense prohibited by law from the statute. Despite the Appellant's claims to the contrary, the Appellant does not have the prosecutorial discretion to amend the statute in this manner.

By way of analogy, imagine two people who are thirsty and decide that they want to purchase a beverage from a vending machine. They don't have any money with them, so they decide to take some quarters that they see in an unlocked vehicle. They then use these quarters to buy a drink from the vending machine. The crime of stealing the quarters would be a misdemeanor and fairly insignificant. However, under appellant's flawed reasoning, a prosecutor simply needs to broaden the scope of this conspiracy until he or she finds a legal "act." For instance, it is a legal act to purchase a beverage from a vending machine or to quench one's thirst. Using that as the "legal act" of the conspiracy, the prosecutor may now charge these conspirators with a five year felony conspiracy charge under MCL 750.157a(d). Certainly, such an absurd result is not what the legislature intended when crafting this statutory section.

In *People v Burton*, 87 Mich App 598, 602-603; 274 NW2d 849 (1978) the court recognized a basic rule of statutory interpretation, and held that:

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it, which modifies the meaning of the words, and even the structure of the sentence."

See also *State Treasurer v Wilson*, 423 Mich 138; 377 NW2d 703 (1985); *People v McDowell*, 85 Mich App 697; 272 NW2d 576 (1978); and *Metro Council 23 v Oakland County*, 409 Mich 299; 294 NW2d 578 (1980).

In *Automotive Service Councils v Secretary of State*, 82 Mich App 574, 601; 267 NW2d 698 (1978) the court asserted another basic rule of statutory interpretation, as follows:

"In construing a statute the words used are given their ordinary meaning. *American Telephone & Telegraph Co v Employment Security Commission*, 376 Mich 271, 279; 136 NW2d 889 (1965)."

Applying these cardinal principles, the language of MCL 750.157a(d) cannot legally be construed to lead to the absurd result that is claimed by the Appellant herein.

Further, Appellant's characterization of the legal "act" as attempting to procure Congressman McCotter's placement on the ballot does not make any sense. Having a name placed on the election ballot is not an "act," it is a "result" flowing from the "acts" of satisfying the election law requirements. The acts involved would be the collecting of signatures, properly certifying them, and submitting them within the timeframe required. If those requirements are satisfied, then the result is placement on the ballot – but the placement on the ballot is not an "act" that could be performed by the Appellee. It is a result or consequence of fulfilling the requirements of Michigan Election Law.

In the Appellant's Brief, the Appellant is trying to characterize the "result" of getting Congressman McCotter on the ballot as the legal "act" committed by the Appellee for purposes of MCL 750.157a(d). However, such a result is really one step removed from the Congressional staffer's last "act" of submitting the nominating petitions. On page 11 of the Appellant's Brief, the Appellant cites the common law, to contend that the defendants agreed to "accomplish" a legal goal. Contrary to this claim, the statute does not use this common law concept or the term "accomplish". The statute language succinctly states that a person must: "commit a legal act". It is irrelevant what accomplishments may later occur. The Appellant is stretching the facts, the law, and the actual written charge in this case well beyond the breaking point in an unsuccessful attempt to support the felony conspiracy charge. However, as a matter of law, these alleged results do not and cannot satisfy the requirements of a conspiracy under MCL 750.157a(d), because they do not identify a legal "act" that was allegedly committed by the Appellee.

In the precedential case of *People v Duncan*, 55 Mich App 403; 222 NW2d 261 (1974), defendant police officers were convicted of conspiracy to commit a legal act in an illegal manner. As noted above, in *Duncan* the defendants offered to return specific property held in the Police Department property room to the complainant. However, before they would return this property to the complainant, they solicited a bribe from her in the amount of \$800.00. In *Duncan*, the "legal act" that the defendants "committed" was the return of the property to the complainant - an act that the defendants themselves performed. In the instant case, contrary to this requirement that the "legal act" be something that could be performed by the defendant, the act of placing the Congressman's name on the ballot is an act which could not, and cannot, be performed by the Appellee. Essentially, the Appellant is attempting to interpret the language "to commit a legal act" as meaning "to commit an act which causes some other third party to commit a legal act", an interpretation which is far beyond the ordinary meaning of the words used in the statute.

Due to the language of the charge in this matter, remand for amendment of the charge is legally unavailable. Indeed, the elements of a felony conspiracy to perform a legal act in an illegal manner are different than the elements of a misdemeanor conspiracy to commit an illegal act. In *People v Berss*, 463 Mich 623, 627-629; 625 NW2d 10 (2001), the court held, in pertinent part, that:

"This Court has characterized cognate offenses as "allied offenses of the same nature." *People v Jones*, 395 Mich. 379, 387; 236 N.W.2d 461 (1975). A cognate offense has some elements in common with the charged offense. It also has elements not found in the charged offense. *Id.*

By contrast, all the elements of a necessarily considered lesser offense are contained within those of the greater offense. Thus, "it is impossible to commit the greater without first having committed the lesser." *Id.*, citing 4 Wharton, Criminal Law & Procedure, § 1799.

* * *

This Court discussed necessarily included lesser offenses and cognate lesser offenses in *People v Chamblis*, 395 Mich. 408; 236 N.W.2d 473 (1975). *Chamblis* considered whether a trial judge may instruct a jury about lesser offenses on its own motion. We held that the late addition of a charge of a necessarily included lesser offense does not infringe a defendant's right to due process. *Id.* at 417.

* * *

However, the addition of a cognate offense may require an accused to present additional or different defenses to rebut the evidence the prosecutor offers on the additional elements. *Chamblis*, 395 Mich. at 418. Due process concerns may arise if the judge, alone, decides to instruct the jury on a cognate offense.

Chamblis illustrates the constitutional difficulties that arise when cognate offenses are equated with necessarily included lesser offenses. The remedy under consideration in this case activates those difficulties. It fails to recognize that the prosecutor was obliged to prove different elements in order to obtain a conviction of the cognate offense."

Since the elements of felony conspiracy to perform a legal act in an illegal manner are different than the elements of misdemeanor conspiracy to commit an illegal act, these two offenses are, at best, cognate offenses. Thus, even if the charging document had not clearly stated that the Appellee allegedly conspired "to submit nominating petitions with valid signatures to the Michigan Secretary of State," the court would still be precluded from amending the charge in the manner stated by the Appellee, under the "cognate offense" principle adopted in *Berss*, *supra*.

For all of these reasons, the Appellee respectfully submits that the Appellant has misconstrued and misapplied the terms "commit" and "act" as used in MCL 750.157a(d). Accordingly, there is no factual or legal merit to any of the claims made by the Appellant, and this appeal should be dismissed.

WHEREFORE, the Defendant/Appellee, PAUL CHARLES SEEWALD, by and through his attorneys, FAUSONE BOHN, LLP, respectfully requests that this Honorable Court to dismiss this appeal, affirm the decisions of the Michigan Court of Appeals and the Circuit Court, and grant the Appellee such further relief for which he is deemed to be entitled.

Respectfully Submitted,

FAUSONE BOHN, LLP

Date: February 10, 2015

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